

REMARKS

In the Office Action¹, the Examiner rejected claims 1-6, 8, 9, 11-15, 26-27, 31, 33-40, and 42 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication No. 2001/0032193 to Ferber ("*Ferber*") in view of U.S. Patent No. 6,418,330 to Lee ("*Lee*"), and further in view of U.S. Patent Publication No. 2001/0051517 to Strietzel ("*Strietzel*"); and objected to claims 7, 10, 28, 29, 30 and 32 as being dependent upon a rejected base claim.

By this Amendment, Applicant amends claims 1, 6, 7, 26, 38-40, and 42, and cancels claim 5.

Applicant respectfully traverses the rejection of claims 1-6, 8, 9, 11-15, and 38-39 under 35 U.S.C. § 103(a) as being unpatentable over *Ferber* in view of *Lee*, and further in view of *Strietzel*. Even if combinable as suggested by the Examiner, *Ferber*, *Lee*, and *Strietzel* fail to disclose or suggest the claimed subject matter.

For example, claim 1 recites a data communication system wherein:

the server device stores first account information corresponding to the content provider identification data and second account information corresponding to the user identification data, the server device incrementing first amount information in the first account information when receiving the content from the first terminal device, the server device decrementing second amount information in the second account information when transmitting the content to the second terminal device; and the server device decrementing a larger second amount information in response to a higher reproduction volume of the content on the second terminal device.

¹ The Office Action contains a number of statements reflecting characterizations of the related art and the claims. Regardless of whether any such statement is identified herein, Applicant declines to automatically subscribe to any statement or characterization in the Office Action.

Ferber discloses a method for wireless advertising in which a user of a cellular telephone registers on a website (page 2, paragraph 0020). According to the Examiner, *Ferber* discloses, at page 2, paragraph 0020, a data communication system wherein the server device makes a larger decrement in the second amount information the higher a reproduction volume of the content is on the second terminal device (Office Action at p. 6). In *Ferber*, the Examiner explicitly interprets “volume” as “quantity.” However, claim 1 refers to the volume when content is reproduced, while *Ferber* refers to the “quantity” of messages received by a user.

For example, in page 2, paragraph 0020, *Ferber* discloses a method, in which users receive remuneration per message sent to the registered wireless device thereby, allowing the customer to earn additional “free” air time on the wireless device. In *Ferber*, by providing advertising content to the customer, the customer can earn additional free cellular device time by virtue of accepting the advertisement.

Thus, while *Ferber* may disclose remunerating the user according to the amount of messages sent to the user’s wireless device, *Ferber* fails to disclose or suggest decrementing amount information in response to a higher reproduction volume of the content on the second terminal device, as recited in amended claim 1. *Ferber* refers to the amount (i.e. “quantity”) of messages received, while claim 1 refers to the volume level while reproducing the content on the terminal device. Volume thus refers to how loud the content is reproduced. For example, applicant’s specification discloses at Fig. 6 and pp. 48-49, making larger discounts (i.e. decrements), in response to a higher volume level while reproducing content because the higher the volume, the easier it is to hear the reproduced content.

Lee also fails to disclose the claimed data communication system. According to the Examiner, *Lee* discloses, at col. 1, lines 49-61, a device configured to reproduce stored content upon detection of an incoming call (Office Action at p. 3). While *Lee* may disclose reproducing a ring tone upon receiving an incoming call, *Lee* also fails to disclose or suggest a system wherein the server device makes a larger decrement in the second amount information in response to a higher reproduction volume of the content on the second terminal device, as recited in amended claim 1.

Strietzel also fails to disclose the claimed data communication system. According to the Examiner, *Strietzel* discloses a ring tone associated with an advertisement content that compensates a subscriber for listening to the ad (at paragraphs 0005, 0033, and 0048) and the reproduction of the ad causes the communication unit to transmit to the server device a reproducing condition of the content reproduced (0061-0064) (Office Action at p. 3).

Strietzel discloses a method for advertisement, wherein the money generated may be used to subsidize the cost of products and services for subscribers to a network (page 5, paragraph 0048). The advertisement method disclosed by *Strietzel*, at page 2, paragraphs 0061-0064, includes providing a user with different options. The options may include: receiving more information prior to a connection between source and destination, purchasing at least one advertised item, and connecting to the advertisement source. Thus, while *Strietzel* may disclose options for reproducing advertisement content, *Strietzel* also fails to disclose or suggest a system wherein the server device makes a larger decrement in the second amount information in response

to a higher reproduction volume of the content on the second terminal device, as recited in amended claim 1.

Neither *Ferber*, *Lee* nor *Strietzel*, taken alone or in any reasonable combination, discloses the data communication system as recited in claim 1, as now amended. Therefore, the subject matter of claim 1 would not have been obvious to one of ordinary skill in the art in view of *Ferber*, *Lee*, and *Strietzel*.

Claims 2-4, 6, 8-9, and 11-15 depend from independent claim 1 and are therefore allowable for at least the same reasons set forth above. In addition, dependent claims 2-4, 6, 8-9, and 11-15 may recite unique combinations that are neither taught nor suggested by prior art.

Independent claims 38 and 39, although of different scope than claim 1, distinguish over the cited references for the same reason as claim 1. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of these claims under 35 U.S.C. § 103(a).

Applicant respectfully traverses the rejection of claims 26, 27, 31, 33-37, 40, and 42 under 35 U.S.C. § 103(a) as being unpatentable over *Ferber* in view of *Lee*, and further in view of *Strietzel*. Even if combinable as suggested by the Examiner, *Ferber*, *Lee*, and *Strietzel* fail to disclose or suggest the claimed subject matter.

For example, amended claim 26 recites a communication terminal device comprising, among other things:

a controlling unit configured to retrieve the content from the storing unit upon detection of incoming call data, cause the reproducing unit to reproduce the retrieved content, and cause the communicating unit to transmit to the server device a reproducing volume of the content reproduced by the reproducing unit.

As set forth above, the Examiner equated “volume” to “quantity” (Office Action at p. 6). However, because the Examiner explicitly refers to the amount (i.e. “quantity”) of messages received, while claim 26 refers to transmitting to the server device a reproducing volume of the content reproduced by the reproducing unit, *Ferber* does not disclose or suggest the claimed communication terminal device.

Furthermore, for at least the reasons set forth above, *Lee* and *Strietzel* also fail to disclose transmitting the reproducing volume of content on a terminal device. Thus, none of *Ferber*, *Lee* or *Strietzel*, taken alone or in any reasonable combination, discloses the communication terminal device as recited in amended claim 26. Therefore, the subject matter of claim 26 would not have been obvious to one of ordinary skill in the art in view of *Ferber*, *Lee*, and *Strietzel*.

Claims 27, 31, and 33-37 depend from independent claim 26 and are therefore allowable for at least the same reasons set forth above. In addition, dependent claims 27, 31, and 33-37 may recite unique combinations that are neither taught nor suggested by prior art.

Independent claims 40 and 42, although of different scope than claim 26, distinguish the references cited by the Examiner for at least the same reasons as claim 26. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejection of these claims under 35 U.S.C. § 103(a).

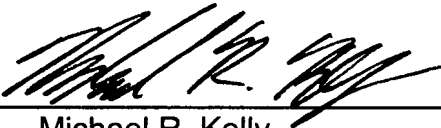
In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

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Dated: April 25, 2007

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